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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,283	10/12/2004	Paul Girbig		1852

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Siemens Corporation  
Intellectual Property Department  
170 Wood Avenue South  
Iselin, NJ 08830

EXAMINER
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STERRETT, JONATHAN G

ART UNIT	PAPER NUMBER
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3623

MAIL DATE	DELIVERY MODE
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09/05/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/511,283

**Applicant(s)**

GIRBIG, PAUL

**Examiner**

JONATHAN G. STERRETT

**Art Unit**

3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3 and 4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3 and 4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☒ Information Disclosure Statement(s) (PTO/SG/US)  
Paper No(s)/Mail Date 10-12-04
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Summary*

1. This **Non-Final Rejection** is responsive to the preliminary amendment of 12 October 2004. Currently Claims 3 and 4 are pending in the application

### *Claim Rejections - 35 USC § 101*

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**Claim 3** is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

**Claims 3** is rejected under 35 U.S.C. 101 based on Supreme Court precedent, and recent Federal Circuit decisions, the Office's guidance to examiners is that a § 101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780,787-88 (1876).

An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory

process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Here, applicant's method steps, fail the first prong of the new Federal Circuit decision since they are not tied to another statutory class and can be performed without the use of a particular apparatus. Thus, **Claim 3** is non-statutory since it may be performed within the human mind.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 3 and 4** are rejected under 35 U.S.C. 103(a) as being unpatentable over Paul **Germeraad**, "Intellectual property in a time of change", Research Technology Management. Arlington: Nov/Dec 1999. Vol. 42, Iss. 6; p. 34 (6 pages) (hereinafter **Germeraad**) in view of **Klenz**, Bradley W; "The Quality Data Warehouse: Serving the analytical needs of the manufacturing enterprise", Milwaukee 1999, p.521, 9 pgs. ProQuest ID 53786375. (hereinafter **Klenz**).

Regarding **Claim 3**, Germeraad teaches:

3. A method for controlling a process flow, comprising:

**determining a plurality of ideal characteristic variables for the process flow that describe a sub-aspect of the process flow and define a desired target for each sub-aspect;**

**determining actual characteristic variables of the sub-aspects of the process flow at an observation time point and the actual state of the process flow in the observation time period is described by the actual characteristic variables;**

Page 35, Germeraad teaches the use of a radar diagram with sub aspects that measure various business process attributes.

**the actual points are graphically connected by connecting lines so that the area enclosed by the connecting lines is a measure of the quality of the process flow in the observation time period.**

Page 35, Klenz suggests using a radar diagram so that the points measured on the axes are connected to form an area.

Germeraad does not teach, but Klenz teaches

**determining a plurality of deviations of the actual characteristic variables from the corresponding ideal characteristic variables with the changes over time of the actual characteristic variables being included; and**

page 4 para 1-3, Klenz teaches the application of Statistical Process Control (i.e. Six Sigma methods) to measure variables in a process so that deviations can be tracked and corrected over time.

**representing the ideal characteristic variables as an optimum point in a display field of a visualization system and the actual characteristic variables are shown as an actual point at a distance from the optimum point and**

page 6 under data warehouse basics, Here Klenz suggests measuring various process capabilities (i.e. being in control of a process or not suggests that ideal characteristics of a process are charted – when those variable are out of control, Klenz suggests using SPC techniques to correct the deviations.

Klenz and Germeraad are addressing issues with how to manage the data that companies have in an efficient way. Both references teach where the multitude of data makes it difficult to efficiently measure what is going on in a firm.

Germeraad suggests the use of the Radar Diagram to efficiently capture and display data so that managers can see what is happening at a glance. Germeraad suggests this because of the wide amount of data that is available to measure.

Klenz teaches that companies can apply SPC techniques to efficiently measure and react to the vast amounts of data that is gathered. Klenz teaches that this data is more than just traditional manufacturing data, but can come from other parts of the organization (see page 1 para 1).

One of ordinary skill in the art would combine Germeraad with Klenz to achieve a predictable result by applying the statistical process control techniques of Klenz to the radar diagram of Germeraad to provide a radar diagram that provides overall process indicators to indicate when the business variables indicated on the radar diagram were out of control or not. The advantages would be providing a compact visual that efficiently summarizes information and provides the benefit of also indicating statistical control, thus providing a predictable result.

Regarding **claim 4**, Germeraad and Klenz do not teach performing the method with a device that comprises a storage area and a module with a display, However Official Notice is taken that performing method steps using a computer with a storage, processor and a display are old and well known in the art. It would have been obvious to perform the method steps of Claim 3 using a computer because it would make the performing of the method faster and more efficient since it is being performed on a computer.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Donath, Bob; "ISBM Nuggets: New Product Development Consortium -Portfolio Management", March 19, 2001, ISBM New Product Development Consortium, Philadelphia, Pa, pp.1-54.,(note the use of radar diagrams to measure how a company is performing).

Cawse US 6725183 teaches the use of statistical process control tools to measure industrial processes. Note that Cawse teaches that these tools can be also used in business processes in general.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan G. Sterrett whose telephone number is 571-272-6881. The examiner can normally be reached on 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Beth Boswell can be reached on 571-272-6737. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JGS 9-1-2008



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/Jonathan G. Sterrett/

Primary Examiner, Art Unit 3623